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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

Daniel Draney and Lorenzo Ibarra,) Case No.: 2:19-cv-01405-ODW-AGR^x
individually and on behalf of all others)
similarly situated,)
Plaintiffs,)
vs.)
Westco Chemicals, Inc.; Alan Zwillinger;)
and Steven Zwillinger,)
Defendants.)
REPLY IN SUPPORT OF AMENDED
MOTION AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO: (1)
PRELIMINARILY APPROVE
PROPOSED SETTLEMENT; (2)
CERTIFY A SETTLEMENT CLASS;
(3) APPROVE PROPOSED PLAN
FOR CLASS NOTICE; AND (4)
SCHEDULE FINAL SETTLEMENT
HEARING
Date: May 9, 2022
Time: 1:30 p.m.
Courtroom: 5D, 5th Floor
Judge: Honorable Otis Wright II

**REPLY IN SUPPORT OF AMENDED MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO:
(1) PRELIMINARILY APPROVE PROPOSED SETTLEMENT; (2) CERTIFY A SETTLEMENT CLASS (3) APPROVE PROPOSED PLAN
FOR CLASS NOTICE; AND (4) SCHEDULE FINAL SETTLEMENT HEARING**

1 **I. CLASS CERTIFICATION**

2 Plaintiffs' Motion for Class Certification is unopposed. Class certification ought to
3 be granted on this basis alone.

4 There is no dispute. Plaintiffs satisfy all of the Rule 23(a) requirements commonly
5 known as numerosity, commonality, typicality, and adequacy of representation. *Lozano v.*
6 *AT&T Wireless Services, Inc.*, 504 F.3d 718, 730 (9th Cir. 2007); *see also See Kanawi v.*
7 *Bechtel Corp.*, 254 F.R.D. 102, 110 (N.D. Cal. 2008). The Court's concerns about typicality
8 and adequacy ought to be allayed given that Defendants' motion for summary judgment
9 was denied and is moot. And because Plaintiffs' are similarly situated to all or virtually all
10 putative class members with respect to any statute of limitation arguments (although no
11 such arguments are pending).

12 Having satisfied all of the requirements of Rule 23(a), Plaintiffs need only satisfy
13 one subsection of Rule 23(b). Plaintiffs primarily seek certification under Rule 23(b)(1).
14 "Most ERISA claims are certified under Rule 23(b)(1)" and ERISA breach of fiduciary
15 duty claims are "paradigmatic" Rule 23(b)(1) claims. *Kanawi*, 254 F.R.D. at 111. Plaintiffs
16 are seeking relief on behalf of the Plan as whole. Thus, certification under Rule 23(b)(1)(A)
17 or Rule 23(b)(1)(B), or both is appropriate.

18 If the Court declines to certify the class under Rule 23(b)(1) it should certify the
19 Class under Rule 23(b)(3). The common questions raised by Plaintiffs' claims predominate
20 over questions affecting only individual members of the proposed class. Resolving the
21 claims in this case on a class wide basis is far superior to any other methods of adjudicating
22 this controversy.

23 **II. PRELIMINARY APPROVAL**

24 Preliminary approval is also appropriate. As required by U.S.C. § 1132(h) Plaintiffs
25 provided the U.S. Secretary of Labor and the U.S. Secretary of the Treasury with a copy of
26 the Complaint in this case after it was filed. *See Declaration of Michael McKay In Support*
27 *Of Amended Motion For Class Certification And Preliminary Approval Of Class Action*

1 Settlement (“McKay Declaration”) ¶ 2. Furthermore, if the Court grants preliminary
2 approval of the proposed settlement then Defendants will cause to be sent notice of the
3 settlement, including the settlement agreement, to federal officials as well as to state
4 regulators. *See* 28 U.S.C. § 1711, *et seq.* Accordingly, the Court will benefit from giving
5 proposed class members the opportunity to object to the settlement, as well as state and
6 federal government officials too. These unique notice procedures are designed to ensure the
7 settlement is fair and reasonable.

8 Plaintiffs do not expect any objections to the proposed settlement. The proposed
9 settlement provides class members with roughly 68% of their potential recovery (before fees
10 and costs). This is an excellent recovery for class members.

11

12 DATED: March 29, 2022

Respectfully submitted,

13

/s/ Michael C. McKay

14 Michael C. McKay (Pro Hac Vice)

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Attorneys for Plaintiffs and the Proposed

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Class

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2022, I electronically transmitted the attached document to the Clerk of the Court using ECF System for filing and served on the following person(s) in the manner indicated below:

TRUCKER ♦ HUSS
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- by CM/ECF Electronic Mail
- by Facsimile Transmission
- by First Class Mail
- by Hand Delivery
- by Overnight Delivery

/s/ Michael C. McKay

Michael C. McKay, Esq.